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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/572,688	03/21/2006	Carlos Galceran Martorell	3608	4928
7590 Striker Striker & Stenby 103 East Neck road Huntington, NY 11743				
04/29/2010				
EXAMINER				
MEHTA, HONG T				
ART UNIT		PAPER NUMBER		
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary**Application No.**

10/572,688

Applicant(s)MARTORELL, CARLOS
GALCERAN**Examiner**

HONG MEHTA

Art Unit

1784

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 February 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 5-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 5-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

This office action is in response to applicant's remarks filed on April 16, 2010.

Pending amended claim 5-15 and new claim 16 are under examination.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

3. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

4. **Claim 5-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Evans (EP 0,217,368) further in view of Merritt et al. (US 4,767,635).**

5. **Regarding claim 5, 6, 7, 15 and 16**, Evans discloses a method of flavoring unpopped corn kernels (Abstract) comprising the steps of soaking the kernels in an aqueous solution containing water and sodium chloride at a temperature of about 100°F to 170°F for 60 minutes to 24 hours (pg. 4, lines 6-9; 14-16; Example 1). Evans discloses a brining system with 16-32 g of flavoring including sodium chloride in 100 ml of water (col. 4, lines 1-4) which corresponds to 0.016 kg - 0.032 kg in 0.1 Liter of water or 14.4 kg to 28.8 kg in 90 Liters of water. As defined within specification page 1, lines 30-33; pg. 2, line 1 and pg. 3, lines 5-12, Evans' brine is considered a hypersaturated brine with similar ingredients sodium chloride and water and disclosed amounts in the brining system.

6. Evans discloses sufficiently soaking the kernels in the brine to allow the flavoring to impregnate the corn kernel (pg. 1, lines 27-31). The soaking step is considered a swelling step for corn kernels to soak and absorb with flavoring brine. Evans discloses drying the corn kernels in a forced draft oven, hot air for 60 minutes (pg. 5, lines 29-33; Example 1). In addition, Evans discloses the additional food flavoring in the "swelling" step, by adding to the soaking water ingredients such as garlic salt, onion salt, celery salt or butter flavored salt (pg. 4, lines 25-31) (see instant claim 15 for adding the additional flavoring during the swelling step). It would have been obvious to one of ordinary skill in the art to vary the combinations of additional flavoring salts to achieve a desired flavored corn kernel final product.

7. Evans does not disclose a surface coating with fixing agents or incorporating additional food flavoring within the step of drying the corn kernels (instant claim 5).

8. However, Merritt et al. discloses a method of preparing a free-flowing uniformed flavorant coated unpopped corn (Abstract). Merritt et al. discloses a spray coating of "fixing agents" such as edible adhesives and other flavors used to coat the unpopped corn (col. 4, lines 43-48; col. 11, lines 31-35; col. 2, lines 22-28). Examiner considers unpopped corn to be raw corn kernels. Merritt's coating step in combination during the Evan's drying step since Merritt teaches spray coating on unpopped corn kernels for added flavor.

9. It would have been obvious to one of ordinary skill in the art to use Merritt's process of surface coating with an edible adhesive and flavors in Evan's process of flavoring corn kernels. Merritt et al. disclose a step of coating the edible adhesive in order to prevent flavor loss in the flavored corn kernels final product. It would have been obvious to use Merritt's aqueous coating mixture with edible adhesives and flavorings in Evan's flavoring process to ensure an overall quality of flavor of the flavored corn foodstuff upon consumption.

10. **With respect to claim 6**, it would have been obvious that the flavoring would still take place at room temperature but may have diminished effects since the art clearly recognizes that elevating the temperatures would increase the flavoring but it does not appear to be necessary in order for the flavoring to take place. Furthermore, 100 degrees is relatively close to room temperature which is dependent upon location and time of day.

11. **Regarding claim 8**, it is conventional to create a homogenous mixture of brine solution comprising water and sodium chloride before the addition of foodstuff, such as corn kernels. It is well known in the art to evenly dissolve and distribute the ingredients into aqueous solution for even treatment of brining of the foodstuff.

12. **Regarding claims 9, 10 and 11**, Merritt et al. in view of Evan disclose the presently claimed invention as mentioned above in claim 5. Examiner considers a the range of 100°F to 170°F (pg. 4, lines 6-9; 14-16; Example 1) in brining/soaking of corn kernels substantially higher than room temperature. The surface area of corn kernels are exposed to atmospheric pressure at any process steps of the flavoring corn kernels. The limitations of claim 9 and 11 of "under pressure" do not specify any pressure therefore atmospheric pressure is considered to be "under pressure".

13. **Regarding claim 12 and 14**, Merritt et al. discloses surface coating with edible adhesive comprising shellac which is a resin (col. 11, line 31), gelatin or pectin (col. 3, line 10) or the combination thereof, which does not impart food flavor such as in sweetness or saltiness.

14. **Regarding claim 13**, Merritt et al. discloses a surface coating with edible adhesive comprising mannitol or zein or the combination thereof, which does impact food flavor sweetness (col. 3, line 13).

Response to Arguments

15. Applicant's arguments filed April 16, 2010 have been fully considered but they are not persuasive.

16. Applicant argues that the prior art references do not disclose hypersaturated brine as cited in the claims. Evans discloses aqueous solution containing water and sodium chloride which is considered hypersaturated brine for corn kernels. Evans discloses a brining system with 16-32 g of flavoring including sodium chloride in 100 ml of water (col. 4, lines 1-4) which corresponds to 0.016 kg - 0.032 kg in 0.1 Liter of water or 14.4 kg to 28.8 kg in 90 Liters of water. As hypersaturated brine is defined within specification page 1, lines 30-33; pg. 2, line 1 and pg. 3, lines 5-12, Evans' oversaturated/supersaturated brine is considered hypersaturated brine with similar ingredients sodium chloride and water and disclosed amounts in the brine system.

17. Applicant argues Evans teaches flavoring component in the brine produces a corn kernel impregnated inside and outside and in contrast present invention is impregnation is only inside. There is no clear support within the instant specification that treatment is only to the inside of kernel. Additionally, Evans teaches additional rinsing with water to remove any remaining flavoring solution on the outside of the kernels ('368, pg. 4, lines 30-31) which is considered to then have flavoring solution on the inside of the kernel only. Additionally, the step of soaking in Evans is commensurate with that of applicant's soaking step. It is unclear how applicant's soaking would result in flavoring solely the interior of the kernel.

18. Applicant argues Merritt deals exclusively with a surface coating and does not include impregnation of corn kernels. Merritt is relied on for teaching a surface coating on unpoppped corn kernels ('635, Abstract). Evans discloses a method of flavoring corn kernels, unpoppped and prior to popping ('368, pg. 25, lines 15-21) and Merritt et al.

discloses a surface coating on unpopped corn ('635, Abstract). The combined teachings of Merritt et al. and Evans disclose the claimed invention as discussed above with the coating of Merritt formed subsequent to the flavoring treatment of Evans. Evans provides a flavorant to the kernel which is imparted by a soaking process, while Merritt provides an adhesive coating to preserve the flavorant of the kernel. It would have been obvious to apply the coating of Merritt to the treated kernel of Evans to preserve the flavoring thereof. While Merritt teaches that a flavorant may be added to the kernel coating, it would have been obvious to use only the resin material if no further flavoring was desired in the kernel, since the resin material serves to protect the flavoring already present in the kernel.

19. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Conclusion

20. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to HONG MEHTA whose telephone number is (571)270-7093. The examiner can normally be reached on Monday thru Thursday, from 7:30 am to 4:30 pm EST..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jennifer McNeil can be reached on 571-272-1540. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Htm

/Jennifer C. McNeil/
Supervisory Patent Examiner, Art Unit 1784